

## **REMARKS**

Before entry of this Amendment, claims 1 - 35 were pending in the application. Claims 7, 8, 10, 11, 14 and 22-35 have been withdrawn. After entry of this Amendment claims 1-6, 9, 12, 13 and 15-21 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made. However, because claims 1 and 18 are believed allowable for reasons explained below and also generic to the species of claims 7, 8, 10, 11, 14 and 22-35, Applicants request that claims 7, 8, 10, 11, 14 and 22-35 be allowed upon allowance of claims 1 and 18.

Applicants have carefully considered the Examiner's Action of July 24, 2006, and the references cited therein. The following is a brief summary of the Action. Claim 13 was objected to because it lacks antecedent basis. Claims 1-6, 9 and 18-21 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165517 A1 to Datta et al. Claims 12, 13 and 15-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al in view of U.S. Patent No. 4,900,317 to Buell. Claims 1 and 18 were provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending Application No. 10/730,364 to Morman et al.

Applicants have amended claim 12 so that claim 13 no longer lacks antecedent basis. Applicants therefore respectfully request withdrawal of the objection to claim 13.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-6, 9 and 18-21 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0165517 A1 to Datta et al.

Initially, it must be noted that while Datta et al is a printed publication with a date of publication that qualifies Datta et al as Section 102(b) prior art, the Section 102(b) rejection relies on disclosure that is not printed anywhere except in U.S. Patent No. 6,552,245 (hereafter Roessler et al). While Datta et al contains a statement referencing Roessler et al, the disclosure relied upon from Roessler et al in the Section 102(b) rejection does not appear in the printed publication that is Datta et al. Neither the Statute, nor Regulations in 37 C.F.R., nor any case decisions of which the undersigned is presently aware, accords Section 102(b) prior art status to information that is in a separate document (Roessler et al), which is merely referenced in the published patent application (Datta et al) that is being cited as anticipating claims under Section 102(b). A rejection under Section 102(b) requires the disclosure to be contained in “a” printed publication. Here the disclosure being relied upon cannot be found in a single document. Moreover, Datta et al’s statement referencing Roessler et al, occurs at paragraph 57 of Datta et al and does not incorporate the entirety of Roessler et al. Datta et al only incorporates Roessler et al “to the extent it assists the present disclosure.” Accordingly, Applicants respectfully submit that Datta et al is deficient as a reference under Section 102(b) because for purposes of Section 102(b) the disclosure that only explicitly appears in Roessler et al, cannot be considered to be published in Datta et al and available to be used as anticipatory prior art in a rejection based on Section 102(b).

Additionally, in rejecting claims 1-6 and 9, the Office Action states on page 3, line 17 through page 4, line 2 that:

at least a first and a second strip of elastomeric material are attached to the necked base layer material, with a space

between the strips such that a center necked region of the base layer material is bordered on at least two sides by composite regions of the elastomeric materials and the base layer material, the center region generally aligned with the absorbent body structure (strips are fit panels 48, waist elastic members 58, leg elastic members 54, attachment panel 66, and containment flaps 56, Figs. 1-9 and paragraphs 11-20, 54, 56, 68-75, 81, and 99).

Similarly, in rejecting claims 18 - 21, the Office Action states on page 4, lines 5 - 12 that:

Datta teaches a strip of elastomeric material attached to the necked base layer material along a side thereof such that a region of the necked base layer material is adjacent a composite region of the elastomeric material and the base layer material, the region of necked base layer material generally overlying and attached to the absorbent body structure in its necked condition (strip is fit panels 48, waist elastic members 58, leg elastic members 54, attachment panel 66, and containment flaps 56, Figs. 1-9 and paragraphs 11-20, 54, 56, 68-75, 81, and 99, including Roessler'245, col. 7, lines 5-12, and col. 17, line 63 to col. 18, line 8).

However, claims 1-6, 9 and 18-21, as amended herein, require that the center necked region of the base layer material is bordered on at least two **longitudinally extending** sides by composite regions of the elastomeric materials and the base layer material. Datta et al's paragraph 52 defines the respective longitudinal direction 38 and lateral direction 40. Datta et al's fit panels 48, waist elastic members 58, and attachment panel 66 do not border **longitudinally extending** sides of the base layer material 44.

Moreover, claims 1-6, 9 and 18-21, as amended herein, require at least the first strip of elastomeric material to be attached to the base layer material. Datta et al's attachment panel 66 and leg elastic members 54 are not attached to Datta et al's base layer material 44. Per Datta et al's paragraph 72, Datta et al's leg elastic members 54

are attached to the outer cover 42. The same is true for Datta et al's attachment panel 66 per Datta et al's Fig.1.

Furthermore, claims 1-6, 9 and 18-21, as amended herein, require at least the first strip of elastomeric material to be wholly disposed on and attached to the base layer material to form planar composite regions of the elastomeric material and the base layer material. Per Datta et al's paragraphs 69 and 70, Datta et al's containment flaps 56 are at most tacked down in a limited area to the base layer material 44 and form an upright perpendicular configuration rather than a planar composite region.

Applicants therefore respectfully submit that claims 1-6, 9 and 18-21, as presented herein, are patentable under 102(b) over Datta et al.

For the reasons explained below, applicants respectfully traverse the rejection of claims 12, 13 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over Datta et al in view of Buell.

None of the above deficiencies noted above in Datta et al are corrected by what is disclosed or suggested in Buell.

Applicants therefore respectfully submit that claims 12, 13 and 15-17, as presented herein, are patentable under 103(a) over Datta et al in view of Buell.

Claims 1 and 18 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending Application No. 10/730,493 to Morman et al. Applicant submits herewith its Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application


Applicants respectfully request reconsideration and reexamination of claims 1-6, 9, 12, 13 and 15-21, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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